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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT JULIO ARNAUD,

Defendant and Appellant.

B299950

(Los Angeles County  
Super. Ct. No. GA097819)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Leslie Conrad, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Appellant Robert Arnaud was convicted of attempted murder in 2017. We affirmed his conviction on appeal, but remanded the matter to allow the trial court to exercise its newly enacted discretion to strike the firearm-use enhancements under Senate Bill No. 620 (Stats. 2017, ch. 682, § 2) (S.B. 620) and the prior serious felony enhancement under Senate Bill No. 1393 (2017-2018 Reg. Sess.) (S.B. 1393). On remand, the trial court struck the five year term for a prior serious felony (Pen. Code § 667, subd. (a)(1))<sup>1</sup> and the 25 years-to-life term for firearm use causing bodily injury (§ 12022.53, subd. (d)), and instead imposed a 20 year term for discharge of a firearm (§ 12022.53, subd. (c)). Appellant appealed from the resentencing. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude no arguable issues exist. We therefore affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

We grant appellant's request for judicial notice of the record in his prior appeal. The factual background is set forth in detail in our previous decision in this case, *People v. Arnaud* (December 10, 2018, B283939) [nonpub.opn.]. According to that opinion, appellant was a member of the Pasadena Latin Kings, a criminal street gang. In December 2015, appellant fired two to three shots from a car toward Jose Moya, a rival gang member, and his companion, Antonio Lizarraga. One of the bullets hit Lizarraga in the leg.

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<sup>1</sup>All further statutory references are to the Penal Code unless otherwise indicated.

The jury convicted appellant of the attempted and premeditated first-degree murder of Lizarraga (§§ 187, subd. (a), 664, subd. (a)). The jury also found true the allegations that the offense was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), as well as three enhancement allegations for personal use of a firearm (§ 12022.53, subds. (b)-(d)). Appellant admitted he suffered a prior strike within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12) and a prior serious felony conviction (§ 667, subd. (a)(1)).

Appellant was sentenced to a total term of 60 years to life. The sentence consisted of 15 years to life for the base offense and corresponding gang enhancement (§ 186.22, subd. (b)(5)), doubled pursuant to the Three Strikes law, plus five years for the prior serious felony conviction (§ 667, subd. (a)(1)), plus a consecutive 25 years-to-life term for the bodily injury firearm enhancement (§ 12022.53, subd. (d)). The court stayed the imposition of sentence on the remaining firearm enhancements and struck the gang enhancement. In the prior appeal, we affirmed the conviction but remanded the matter for the trial court to exercise its discretion to strike the firearm enhancements under S.B. 620 and the prior serious felony enhancement under S.B. 1393.

At the hearing on remand, appellant's counsel asked the court to strike both enhancements, citing evidence of appellant's personal growth and accomplishments in prison. Appellant's activities included vocational training, college courses, charity work, gang rehabilitation, and drug rehabilitation and counseling. His counsel argued that striking the enhancements would retain a lengthy sentence for appellant, while allowing him a "true meaningful goal" of working toward possible parole.

Appellant also addressed the court, acknowledging responsibility for his actions and expressing his remorse.

In addition to exercising its discretion under S.B. 620 and 1393, the court indicated it would revisit appellant's motion to strike under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The court stated it had considered appellant's progress and good conduct in prison, as well as his youth at the time of the crime and his childhood environment, which presented him with "severely limited" options. The court also acknowledged that appellant's original sentence was "tantamount to life in prison...without parole." However, the court also noted that there was "nothing mitigating" about the facts of the case or appellant's criminal history. The court explained it was exercising its discretion in an attempt to "fashion a sentence that is appropriate" given appellant's crime and also recognizing that he was "a different person today."

Accordingly, the court sentenced appellant to 15 years to life for attempted murder, doubled under the Three Strikes law. The court struck the 25 years-to-life enhancement under section 12022.53, subdivision (d) and instead imposed a consecutive term of 20 years under section 12022.53, subdivision (c), reasoning that it "adequately punishes for the discharge of the firearm causing injury in this case." The court also struck the five year prior under section 667, subdivision (a)(1) in the interests of justice. Thus, appellant was re-sentenced to a total term of 50 years to life.

The court also awarded appellant credit for 1,259 actual days in custody from the date of his arrest. The court initially refused to calculate appellant's good time/work time credit, stating, "[T]he Department of Corrections is going to have to

calculate the credits.” However, appellant’s counsel subsequently asked the court to correct the abstract of judgment to reflect presentence conduct credit pursuant to *People v. Buckhalter* (2001) 26 Cal.4th 20. The trial court accordingly corrected the abstract of judgment to reflect 1,259 actual days in custody and local pre-sentence conduct credit of 83 days.

Appellant timely appealed.

On appeal, appellant’s appointed counsel filed a brief requesting that we independently review the record for error. (*Wende, supra*, 25 Cal.3d at p. 441.) We directed counsel to send the record and a copy of the brief to appellant, and notified appellant of his right to respond within 30 days. We have received no response.

### **DISCUSSION**

We have examined the entire record, and are satisfied no arguable issues exist in the appeal before us. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 110; *Wende, supra*, 25 Cal.3d at p. 443.)

### **DISPOSITION**

The judgment is affirmed.

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COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.